

1 **I. Relevant Factual and Procedural Background**

2 Defendant Vázquez, a member and activist of the Popular Democratic Party (“PDP”),
3 became the Superintendent of the Puerto Rico Capitol in December, 2012, after the defeat of the
4 New Progressive Party (“NPP”) in the November, 2012 general election. (Docket No. 26 ¶¶ 15-
5 17.) The Office of the Superintendent (“the Superintendence”), established by Law No. 4 of July
6 21, 1977, P.R. LAWS ANN. tit. 2, §§ 651-60 *et seq.*, is responsible for the maintenance,
7 conservation and repairs of the Puerto Rico Capitol Building. (Docket No. 26 ¶ 13.)

8 Plaintiff Méndez has been an employee of the Superintendence since April 1, 2001. *Id.* ¶¶
9 1; 21. Plaintiff has a bachelor’s degree in Business Administration and Accounting and a master’s
10 degree in Human Resources. *Id.* ¶ 22. He began as a cabinetmaker and gradually worked his way
11 up to become the Main Accounting Officer¹ in charge of contracts in the Finance and Accounting
12 Department. *Id.* ¶¶ 25-29.

13 At the time he was hired, Plaintiff was affiliated with the PDP. (Docket No. 26 ¶ 24.)
14 However, Plaintiff’s political affiliation changed after developing a close professional and personal
15 relationship with Defendant’s predecessor, former Superintendent Eliezer Velázquez
16 (“Velázquez”), who is affiliated with the NPP. (Docket No. 26 ¶ 31-32.) Plaintiff began attending
17 NPP activities with Velázquez. *Id.* ¶ 33. Plaintiff alleges that his recent affiliation with the NPP
18 became widely known in the Superintendence because he actively participated in Velázquez’s NPP
19 campaign for the Puerto Rico Senate and he accompanied Velázquez to a highly publicized local
20 activity for then Republican presidential candidate Mitt Romney. *Id.* ¶ 34. Plaintiff contends that
21 as soon as Defendant assumed office, he personally engaged in reviewing the personnel records of

22 ¹ Plaintiff referred to this position as “Main Accounting Analyst” at Docket No. 26 ¶ 29, but used “Main
23 Accounting Officer” in the remaining allegations. *Id.* ¶¶ 36; 38; 47-48. The Court adopts “Main Accounting Officer”
24 for this Opinion.

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1 employees in order to identify their respective political affiliations to target NPP supporters for
2 reprisal. Id. ¶ 20. Additionally, Defendant appointed another employee to serve as Plaintiff’s
3 subordinate, allegedly to familiarize himself with Plaintiff’s work so he could replace Plaintiff in
4 the future. Id. ¶ 36.

5 On December 9, 2013, the Deputy Superintendent Alvaro Vazquez-Ramos called Plaintiff
6 to the Human Resource Office and told him that he “had been reclassified from Main Accounting
7 Officer to Executive Officer” and that his monthly compensation would be reduced by \$500. Id.
8 ¶¶ 37-39. Plaintiff was transferred to the Security Department to perform security guard duties.
9 Id. ¶¶ 40; 42. Plaintiff maintains that he had not been charged with any misconduct before the
10 transfer and the salary reduction. Id. ¶ 41. Defendant subsequently appointed a PDP-affiliated
11 employee as the new Main Accounting Officer, with an increased salary of \$950. Id. ¶¶ 47-48.

12 **II. Standard of Review**

13 When considering a motion to dismiss for failure to state a claim upon which relief can be
14 granted, see FED. R. CIV. P. 12(b)(6), the court analyzes the complaint in a two-step process under
15 the current context-based “plausibility” standard established by the Supreme Court. See Schatz v.
16 Republican State Leadership Comm., 669 F.3d 50, 55 (1st Cir. 2012) (citing Ocasio-Hernández v.
17 Fortuño-Burset, 640 F.3d 1, 12 (1st Cir. 2011) which discusses Ashcroft v. Iqbal, 556 U.S. 662
18 (2009) and Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)). First, the court must “isolate and
19 ignore statements in the complaint that simply offer legal labels and conclusions or merely rehash
20 cause-of-action elements.” Id. A complaint does not need detailed factual allegations, but
21 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
22 statements, do not suffice.” Iqbal, 556 U.S. at 678-79. Second, the court must then “take the
23 complaint’s well-[pleaded] (i.e., non-conclusory, non-speculative) facts as true, drawing all

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1 reasonable inferences in the pleader’s favor, and see if they plausibly narrate a claim for relief.”
2 Schatz, 669 F.3d at 55. Plausible, means something more than merely possible, and gauging a
3 pleaded situation’s plausibility is a context-specific job that compels the court to draw on its
4 judicial experience and common sense. Id. (citing Iqbal, 556 U.S. at 678-79). This “simply calls
5 for enough facts to raise a reasonable expectation that discovery will reveal evidence of” the
6 necessary element. Twombly, 550 U.S. at 556.

7 “[W]here the well-pleaded facts do not permit the court to infer more than the mere
8 possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’—‘that the pleader
9 is entitled to relief.’” Iqbal, 556 U.S. at 679 (quoting FED. R. CIV. P. 8(a)(2)). If, however, the
10 “factual content, so taken, ‘allows the court to draw the reasonable inference that the defendant is
11 liable for the misconduct alleged,’ the claim has facial plausibility.” Ocasio-Hernández, 640 F.3d
12 at 12 (quoting Iqbal, 556 U.S. at 678).

13 **III. Legal Analysis**

14 A. Political Discrimination Claim

15 Defendant seeks dismissal of Plaintiff’s political discrimination claim arguing Plaintiff has
16 not pled sufficient facts to show Defendant knew of his political affiliation or that such knowledge
17 motivated Plaintiff’s reclassification at the Superintendence. (Docket No. 28 at 5-13.)

18 The First Amendment prohibits government officials from taking “adverse employment
19 action against public employees on the basis of political affiliation, unless political loyalty is an
20 appropriate requirement of the employment.” Ocasio-Hernandez, 640 F.3d at 13. To state a *prima*
21 *facie* case of political discrimination based on the First Amendment Plaintiff must demonstrate
22 four elements: “(1) that the plaintiff and defendant have opposing political affiliations, (2) that the
23 defendant is aware of the plaintiff’s affiliation, (3) that an adverse employment action occurred,

1 and (4) that political affiliation was a substantial or motivating factor for the adverse employment
2 action.” Lamboy-Ortiz v. Ortiz-Vélez, 630 F.3d 228, 239 (1st Cir. 2010). The Court evaluates the
3 cumulative effect of all factual allegations instead of analyzing each of them in isolation. Ocasio-
4 Hernandez, 640 F.3d at 14.

5 At this stage, Defendant only challenges two elements of Plaintiff’s prima facie case: (1)
6 whether it is plausible that Defendant knew of Plaintiff’s political affiliation and (2) whether
7 Defendant’s knowledge of this fact motivated Plaintiff’s reclassification.² (See Docket No. 28 at
8 4.) The Court will discuss each element in turn.

9 1. Knowledge of Plaintiff’s Political Affiliation

10 Defendant claims Plaintiff failed to support his allegations that Defendant knew or that he
11 affirmatively inquired into his political affiliation. (Docket No. 28 at 6-7.)

12 The First Circuit has recognized that political discrimination often turns on an employer’s
13 cloaked motives that can be hard for the employee to prove. Ocasio-Hernández v. Fortuño-Burset,
14 777 F.3d 1, 7 (1st Cir. 2015). Thus, knowledge may be inferred from circumstantial evidence.
15 See, e.g., Martínez-Vélez v. Rey-Hernández, 506 F.3d 32, 44 (1st Cir. 2007) (holding that a
16 reasonable jury could infer that the defendant was aware of the plaintiff’s NPP affiliation based on
17 _____

18 ² In his opposition to Defendant’s Motion to Dismiss, Plaintiff argues discriminatory animus can be implied
19 from the fact that Defendant has failed to proffer any non-discriminatory reasons for Plaintiff’s reclassification.
(Docket No. 31 at 12.)

20 Generally, if the plaintiff proves his *prima facie* case of political discrimination, the burden shifts to the
21 defendant to articulate a non-discriminatory reason for the adverse employment action and establish, by a
preponderance of the evidence, that the same action would have been taken regardless of the plaintiff’s political beliefs
– also known as the Mt. Healthy Defense. Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 287
(1977). In response, “the plaintiff may discredit the proffered non-discriminatory reason, either circumstantially or
directly, by adducing evidence that discrimination was more likely than not a motivating factor.” Padilla-Garcia v.
Guillermo Rodríguez, 212 F.3d 69, 77 (1st Cir. 2000).

22 However, raising the Mt. Healthy defense “is inappropriate at the motion to dismiss stage because the parties
23 have not yet engaged in any significant discovery.” Landron & Vera, LLP v. Somoza-Colombani, No. 12-1858(SEC),
2013 WL 2422807, at *8 (D.P.R. June 3, 2013). Therefore, the Court focuses its analysis on the plausibility of
Plaintiff’s allegations to establish his political discrimination *prima facie* case.

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1 testimony that the plaintiff “spoke openly about her political views and sat in the NPP portion of
2 the de facto segregated cafeteria.”). While knowledge is not imputed to defendant when a plaintiff
3 merely alleges that his political affiliation is well known, Rivera Feliciano v. State Ins. Fund Corp.,
4 652 F. Supp. 2d 170, 186-87 (D.P.R. 2009) (citations omitted), courts are willing to infer
5 defendants knew of a plaintiff’s political affiliation when the defendant engages in a “witch-hunt”
6 to obtain such information. See Rodríguez-Reyes v. Molina-Rodríguez, 711 F.3d 49, 55 (1st Cir.
7 2013).

8 In the present case, the Court can infer from Plaintiff’s factual allegations that Defendant
9 knew of Plaintiff’s political affiliation. Plaintiff alleges that Defendant, a PDP activist, became the
10 Superintendent one month after the PDP gained the majority in the Puerto Rico legislature.
11 (Docket No. 26 ¶¶ 15-17.) Plaintiff asserts that as Defendant prepared for the transition to the new
12 PDP administration, Defendant personally identified employees with any connection to the NPP by
13 reviewing employee personnel records. Id. ¶ 20. Plaintiff also maintains he became an active
14 supporter of the NPP after developing a close relationship with former superintendent Velázquez,
15 participating in Velázquez’s campaign for the Senate and attending political events with him. Id.
16 ¶¶ 31-34. Plaintiff’s friendship with Velázquez and his involvement in a highly publicized tour
17 with Republican presidential candidate Mitt Romney became widely known within the
18 Superintendence. Id. ¶ 34.

19 Thus, the Court finds that Plaintiff’s political activism outside the Superintendence and his
20 public friendship with Velázquez, coupled with the allegation that Defendant himself reviewed
21 employee personal records to identify employees potentially affiliated with the NPP, reasonably
22 support an inference that Defendant knew of Plaintiff’s political affiliation.

2. Substantial or Motivating Factor

Plaintiff must allege sufficient facts to show political affiliation was a substantial or motivating factor for the adverse employment action. Lamboy-Ortiz, 630 F.3d at 239. This prong is often described as a showing of discriminatory animus. The First Circuit has recognized that “it is rare that a ‘smoking gun’ will be found in a political discrimination case, and thus circumstantial evidence alone may support a finding of political discrimination.” Id. at 240. Specifically, pertinent factors include time lapsed between the reclassification and the change in political administration, the absence of negative job evaluations and nondiscriminatory explanation for the reclassification, and the political affiliation of the person who replaced Plaintiff. Rodríguez-Reyes, 711 F.3d at 57; Medina-Velázquez v. Hernández-Gregorat, 767 F.3d 103, 111 (1st Cir. 2014). Additionally, Plaintiff must sufficiently allege Defendant’s involvement in the reclassification. Medina-Velázquez, 767 F.3d at 111-12 (citing Ocasio-Hernández, 640 F.3d at 16) (“[p]ublic officials may be held liable . . . for a constitutional violation only if a plaintiff can establish that constitutional injury resulted from the direct acts or omissions of the official, or from indirect conduct that amounts to condonation or tacit authorization.”).

The Court first determines if Plaintiff alleged sufficient facts to infer Defendant was involved in the decision to reclassify him. In doing so, the Court must decide whether Defendant was put on actual or constructive notice of Plaintiff’s reclassification. Medina-Velázquez, 767 F.3d at 112 (citations omitted). The Court can infer involvement if the defendant directed, encouraged, or chose not to remedy the adverse employment action. Id. (citing Lipsett v. Univ. of P.R., 864 F.2d 881, 902 (1st Cir. 1988)). Plaintiff alleges that Defendant had at least constructive notice of Plaintiff’s reclassification.

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1 Defendant has authority over personnel decisions at the Superintendence because he
2 appointed another employee to be Plaintiff's subordinate. (Docket No. 26 ¶ 36.) Not only did
3 Defendant personally review the personnel records of employees to identify their political
4 affiliations as he prepared for the transition to the new PDP administration, but it was also the
5 deputy Superintendent acting under Defendant's direct authority who informed Plaintiff of his
6 reclassification. Id. ¶¶ 20; 37-38. Thus, the Court finds it plausible that Defendant could have
7 been involved in Plaintiff's reclassification.

8 The Court is not convinced by Defendant's argument that a causal connection is missing
9 because it took a year to re-classify Plaintiff. (Docket No. 28 at 10.) Courts usually find political
10 animus where there is temporal proximity between the administration change and the adverse
11 employment action. See, e.g., Medina-Velázquez, 767 F.3d at 111; Grajales v. P.R. Ports Auth.,
12 682 F.3d 40, 50 (1st Cir. 2012). Nonetheless, a longer time interval, alone, does not prove absence
13 of political animus. Rodríguez-Reyes, 711 F.3d at 56-57. The Court notes that this lag could
14 result from the difficulty of filling Plaintiff's position, given the skills required and level of
15 expertise needed to become the Main Accounting Officer in the Department of Finance and
16 Accounting. (Docket Nos. 26 ¶ 36; 31 at 12.) Plaintiff has a bachelor's degree in Business
17 Administration and Accounting and a master's degree in Human Resources, and maintains that it
18 took him six years and two promotions to become the Main Accounting Officer. (Docket No. 26
19 ¶¶ 22-28.) Even with political animus, Defendant might have had trouble fringing someone
20 qualified to replace Plaintiff.

21 The Court finds that Plaintiff has alleged sufficient facts to support an inference of
22 Defendant's discriminatory motive. According to Plaintiff, at no point was he charged with
23 misconduct that may have led to his transfer and salary reduction, nor was he given any reasons for
24

1 C. Fourteenth Amendment Due Process Claim

2 1. Procedural Due Process

3 The Fourteenth Amendment forbids a state to “deprive any person of life, liberty, or
4 property, without due process of law” U.S. Const. amend. XIV. The due process guarantee
5 has both procedural and substantive aspects. See Amsden v. Moran, 904 F.2d 748, 753 (1st Cir.
6 1990). A viable procedural due process claim must demonstrate a “deprivation by state action of a
7 constitutionally protected interest in ‘life, liberty, or property’ . . . without due process of law.”
8 Romero-Barceló v. Hernández-Agosto, 75 F.3d 23, 32 (1st Cir. 1996). “The Due Process Clause
9 of the Fourteenth Amendment protects government employees who possess property interests in
10 continued public employment.” Ruiz-Casillas v. Camacho-Morales, 415 F.3d 127, 134 (1st Cir.
11 2005) (citations omitted). In order to determine whether public employees possess such a property
12 right, the First Circuit requires that the Court examine local law and the terms and conditions of
13 the employment arrangement. See Ruiz-Casillas, 415 F.3d at 134.

14 Under Puerto Rico law, career employees have a property interest in their continued
15 employment. Garnier v. Rodriguez, 506 F.3d 22, 27 (1st Cir. 2007) (citing González-de-Blasini v.
16 Family Dept., 377 F.3d 81, 86 (1st Cir. 2004)). Due process requires that prior to a deprivation of
17 life, liberty, or property the individual being deprived of said interest be given notice and an
18 opportunity to be heard. See Herwins v. City of Revere, 163 F.3d 15, 18 (1st Cir. 1998) (citing
19 Memphis Light, Gas and Water Div. v. Craft, 436 U.S. 1, 19 (1978)). However, this property
20 interest extends only to the position itself, not to the functions performed by the employee. Ruiz-
21 Casillas, 415 F.3d at 134 (finding no violation of due process under the Fourteenth Amendment
22 because the plaintiff only had his duties downgraded but he was not fired). Where a plaintiff does
23 not contend that his employment was terminated, but rather asserts that he was demoted, or his

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1 compensation diminished, Puerto Rico law will not afford him a constitutionally protected interest.
2 See Rodriguez-Pinto v. Tirado Delgado, 798 F. Supp. 77, 83-84 (D.P.R. 2004), *aff'd* on this
3 ground, 982 F.2d 34, 41 (1st Cir. 1993); see also Morales-Narvaez v. Rossello, 852 F. Supp. 104,
4 113 (D.P.R. 1994) (summarizing cases holding that a plaintiff is not deprived of a property interest
5 by a change in duties or title).

6 In this case, Plaintiff has failed to state a claim for a procedural due process violation
7 because he was not fired. Even though Plaintiff was transferred to the security department within
8 the Superintendence, under Puerto Rico law, Plaintiff has no property interest in his original job
9 functions. Thus, Plaintiff's procedural due process claim based solely on the transfer to a different
10 department, even with a change of duties and salary reduction, is not sufficient to show he was
11 deprived of a property interest. See Quiles-Santiago v. Rodriguez-Diaz, 851 F. Supp. 2d 411, 427
12 (D.P.R. 2012).

13 2. Substantive Due Process

14 "A substantive due process claim requires allegations that the government conduct was, in
15 and of itself, inherently impermissible irrespective of the availability of remedial or protective
16 procedures." Maymi v. P.R. Ports Auth., 515 F.3d 20, 30 (1st Cir. 2008). When Plaintiff has
17 stated a viable First Amendment claim, a substantive due process claim based on the same conduct
18 is barred. Ramírez v. Arlequín, 447 F.3d 19, 25 (1st Cir. 2006); see also Cruz v. P.R. Planning
19 Bd., 99 F. Supp. 3d 249, 259-60 (D.P.R. 2015). In the instant case, there is no basis for a
20 substantive due process claim because Plaintiff's assertion that the reclassification and the salary
21 reduction are acts of political discrimination are covered by the First Amendment. The same
22 allegations cannot also support a substantive due process claim. Thus, Defendant's motion to
23 dismiss Plaintiff's Fourteenth Amendment due process claims is **GRANTED**.

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1 40; 54). Furthermore, in support of his Section 1983 claim, Plaintiff sufficiently alleges that
2 because of his political affiliation, Defendant discriminated against him by demoting him from the
3 Finance and Accounting Department to the Security Department and reducing his salary. (Docket
4 No. 26 ¶¶ 38-40; 53-54.) The underlying factual allegations of Plaintiff’s Section 1983 claim also
5 encompass the essential elements of his Article 1802 claim. Thus, Defendant’s motion to dismiss
6 Plaintiff 1802 claim is **DENIED**.

7 Lastly, “the Federal and Puerto Rico Constitutions contain analogous provisions protecting
8 an individual’s right to Due Process of Law.” Nazario v. Dep’t of Health of Puerto Rico, 415 F.
9 Supp. 2d 48, 48-49 (D.P.R. 2006); compare U.S. Const. Amend. XIV, § 1 with P.R. Const. art. II,
10 § 7. Because the Court grants Defendant’s motion to dismiss as to Plaintiff’s federal Due Process
11 claims, Defendant’s motion as to Plaintiff’s claim under Article II, § 7 of the Puerto Rico
12 Constitution is also **GRANTED**.

13 **V. Conclusion**

14 For the reasons stated above, Defendants’ motion to dismiss at Docket No. 28 is
15 **GRANTED in part and DENIED in part**. Defendant’s motion to dismiss Plaintiff’s First
16 Amendment political discrimination claim and Article 1802 claim is **DENIED**. Defendant’s
17 motion to dismiss Plaintiff’s Fifth and Fourteenth Amendment Due Process, and Law 100 claims is
18 **GRANTED**.

19 **SO ORDERED.**

20 In San Juan, Puerto Rico, this 8th day of March 2016.

21 *s/ Gustavo A. Gelpí*
22 GUSTAVO A. GELPI
23 United States District Judge